

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

GEMANE NETTLES,  
Plaintiff,  
vs.

ZOOM 34 LLC, LIBERTY TROPICAL  
JERK & SEAFOOD CENTER INC. and  
LIBERTY CHICKEN, INC.,  
Defendants.

**COMPLAINT**

Plaintiff, GEMANE NETTLES (“Plaintiff”), by his undersigned counsel, hereby files this Complaint against Defendants, ZOOM 34 LLC, LIBERTY TROPICAL JERK & SEAFOOD CENTER INC. and LIBERTY CHICKEN, INC. (“Defendants”) for injunctive relief pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq., (the ADA) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (hereinafter the “ADAAG”). This matter concerns Plaintiff’s visits to a restaurant located at 165-25 Liberty Avenue, Jamaica, New York 11433, POPEYE’S LOUISIANA KITCHEN and TROPICAL JERK, wherein Plaintiff encountered several barriers which have and will deter him from visiting the restaurant in the future. Plaintiff’s past visit and his desire to return are fully set forth herein.

**JURISDICTION**

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C., §§1331 and 1343 for Plaintiff’s claims arising under 42 U.S.C. § 12181. et seq., based upon Defendants’ violations of Title III of the ADA (see also, 28 U.S.C. §§ 2201 and 2202).

2. Plaintiff currently resides in the Brooklyn, New York.

3. Plaintiff is complete T-6 paraplegic and bound to ambulate in a wheelchair. He has been disabled for over 22 years and is a qualified individual with disabilities under the ADA.

4. Plaintiff visited the subject property located at 165-25 Liberty Avenue, Jamaica, New York 11433 (the “Facility”) to enjoy the goods and services offered therein and encountered barriers to access. Plaintiff desires and intends to return to the Facility to enjoy to goods and services offered therein. However, his access to the Facility continues to be denied and/or substantially limited. His access will continue to be denied until Defendants remove the barriers, including those set forth in the Complaint at Paragraph 17 below.

5. Defendant, ZOOM 34 LLC, transacts business in the State of New York and within this judicial district. Defendant, ZOOM 34 LLC, is the owner and/or lessor, of the real property located at 165-25 Liberty Avenue, Jamaica, New York 11433 where the restaurant known as POPEYE’S LOUISIANA KITCHEN and TROPICAL JERK is located (the “Facility”).

6. Defendant, LIBERTY CHICKEN, INC., transacts business in the State of New York and within this judicial district. Defendant, LIBERTY CHICKEN, INC., is the lessee of the Facility located at 165-25 Liberty Avenue, Jamaica, New York 11433 and the owner and/or operator of a restaurant known as POPEYE’S LOUISIANA KITCHEN (the “Facility”).

7. Defendant, LIBERTY TROPICAL JERK & SEAFOOD CENTER INC., transacts business in the State of New York and within this judicial district. Defendant, LIBERTY TROPICAL JERK & SEAFOOD CENTER INC., is the lessee of the Facility located at 165-25 Liberty Avenue, Jamaica, New York 11433 and the owner and/or operator of a restaurant known as TROPICAL JERK (the “Facility”).

8. The Facility is a place of public accommodation under the ADA.

9. Plaintiff has suffered legal harm and injury in fact, as he visited the Facility to enjoy the goods and services provided therein, encountered barriers to access, and desires and intends to re-visit the Facility again, but is unable to do so until the barriers to access are remediated.

10. The barriers alleged in Paragraph 17, by their very nature, prevent Plaintiff and other wheelchair bound patrons from accessing the premises and enjoying the goods and services offered therein.

11. The removal of the alleged barriers can be accomplished without much difficulty or expense.

12. All events giving rise to this lawsuit occurred in the State of New York. Venue is proper in this Court as the premises is in the Southern District.

### **FACTUAL ALLEGATIONS AND CLAIM**

13. Plaintiff has attempted to access the Facility on multiple occasions, including May 5, 2024, to enjoy the goods and services offered therein but could not do so without substantial hardship due to his disability, which requires him to ambulate in a wheelchair, and the significant barriers to access existing at the Facility.

14. Plaintiff intends to visit the Facility in the future to enjoy to goods and services offered therein, as he drives by this shopping center on a regular basis.. However, his access to the Facility continues to be denied and/or substantially limited. His access will continue to be denied until Defendants remove the barriers, including those set forth in the Complaint at Paragraph 17 below.

15. Plaintiff passes this shopping center on an almost daily basis on his way to work and home again, and often desires to stop to enjoy Popeye's chicken or jerk chicken and seafood

to enjoy on site, or to take out and enjoy at home, but he is discouraged due to the numerous barriers that make his visits difficult.

16. Defendants have discriminated against Plaintiff by denying him full access to the goods, services and/or accommodations of the Facility, as prohibited by 42 U.S.C., § 12182, et. seq., and by failing to remove architectural barriers as required by 42 U.S.C., § 12182(b)(2)(A)(iv), will continue to discriminate against Plaintiff unless and until Defendants remove all physical barriers including those specifically set forth below.

17. Defendants have discriminated against Plaintiff by failing to remedy the ADA violations, which by their nature, affect Plaintiff and other wheelchair bound plaintiffs. A specific list of ADA violations which preclude and/or limit Plaintiff's ability to access the facility and to enjoy the goods and services offered therein, include the following:

- I. Accessible parking spaces not provided as required within existing parking area.  
ADAAG 208 Parking Spaces  
ADAAG 208.1 General.  
Where parking spaces are provided, parking spaces shall be provided in accordance with 208.  
ADAAG 208.2 Minimum Number.  
Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.
- II. Inaccessible entrance.
- III. Accessible route to establishment not provided as required.
- IV. Accessible means of egress not provided as required.
- V. Raised curb at travel path to entrance from west side of property acts as a barrier to accessibility.
- VI. Compliant ramp not provided as required for raised curb at travel path to entrance from west side of property.  
ADAAG 206 Accessible Routes  
ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 207 Accessible Means of Egress

ADAAG 207.1 General.

Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, "Referenced Standards" in Chapter 1).

ADAAG 402 Accessible Routes

ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 403 Walking Surfaces

ADAAG 403.4 Changes in Level.

Changes in level shall comply with 303

ADAAG 303.4 Ramps.

Changes in level greater than ½ inch high shall be ramped, and shall comply with 405 or 406.

- VII. Non-compliant existing ramp at travel path to entrance from east side of property.
- VIII. Non-compliant slope of ramp at travel path to entrance from east side of property exceeds maximum slope allowance.

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 402 Accessible Routes

ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 405 Ramps

ADAAG 405.1 General.

Ramps on accessible routes shall comply with 405.

ADAAG 405.2 Slope.

Ramp runs shall have a running slope not steeper than 1:12.

IX. Non-compliant raised ground surface at travel path to entrance from top of ramp at east side of property.

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 402 Accessible Routes

ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All

components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 403 Walking Surfaces

ADAAG 403.4 Changes in Level.

Changes in level shall comply with 303

ADAAG 303.4 Ramps.

Changes in level greater than ½ inch high shall be ramped, and shall comply with 405 or 406.

**X. Non-compliant ground surface of unstable broken concrete at travel path to entrance from top of ramp at east side of property.**

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 402 Accessible Routes

ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 403 Walking Surfaces

ADAAG 403.1 General.

Walking surfaces that are a part of an accessible route shall comply with 403.

ADAAG 403.2 Floor or Ground Surface.

Floor or ground surfaces shall comply with 302.

ADAAG 302 Floor or Ground Surfaces

ADAAG 302.1 General.

Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.

**XI. Non-compliant elongated openings exceeding maximum diameter allowance in ground surface at travel path to entrance from top of ramp at east side of property.**

XII. Non-compliant placement of elongated openings in ground surface not positioned so that the long dimension is perpendicular to the dominant direction of travel.

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 402 Accessible Routes

ADAAG 402.1 General.

Accessible routes shall comply with 402.

ADAAG 402.2 Components.

Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

ADAAG 403 Walking Surfaces

ADAAG 403.1 General.

Walking surfaces that are a part of an accessible route shall comply with 403.

ADAAG 403.2 Floor or Ground Surface.

Floor or ground surfaces shall comply with 302.

ADAAG 302.3 Openings.

Openings in floor or ground surfaces shall not allow passage of a sphere more than ½ inch (13 mm) diameter except as allowed in 407.4.3, 409.4.3, 410.4, 810.5.3 and 810.10. Elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

XIII. Required minimum maneuvering clearance not provided in entrance vestibule at exterior side of door at the first of two entry travel paths.

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.



At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 206.4.1 Public Entrances.

In addition to entrances required by 206.4.2 through 206.4.9, at least 60 percent of all public entrances shall comply with 404.

ADAAG 207 Accessible Means of Egress

ADAAG 207.1 General.

Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International Building Code (2003 edition) (incorporated by reference, "Referenced Standards" in Chapter 1)

ADAAG 404.2.4 Maneuvering Clearances.

Minimum maneuvering clearances at doors and gates shall comply with 404.2.4.

Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

**XIV. Required minimum maneuvering clearance not provided in entrance vestibule at exterior side of door at the second of two entry travel paths.**

ADAAG 206 Accessible Routes

ADAAG 206.1 General.

Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

ADAAG 206.2 Where Required.

Accessible routes shall be provided where required by 206.2.

ADAAG 206.2.1 Site Arrival Points.

At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

ADAAG 206.4 Entrances.

Entrances shall be provided in accordance with 206.4. Entrance doors, doorways, and gates shall comply with 404 and shall be on an accessible route complying with 402.

ADAAG 206.4.1 Public Entrances.

In addition to entrances required by 206.4.2 through 206.4.9, at least 60 percent of all public entrances shall comply with 404.

ADAAG 207 Accessible Means of Egress

ADAAG 207.1 General.

Means of egress shall comply with section 1003.2.13 of the International Building Code (2000 edition and 2001 Supplement) or section 1007 of the International

Building Code (2003 edition) (incorporated by reference, “Referenced Standards” in Chapter 1)

ADAAG 404.2.4 Maneuvering Clearances.

Minimum maneuvering clearances at doors and gates shall comply with 404.2.4.

Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance.

- XV. Inaccessible dining tables.
- XVI. A minimum percentage of existing dining tables required to be accessible not provided.
- XVII. Required minimum knee and toe clearance not provided at dining tables.
  - ADAAG 226 Dining Surfaces and Work Surfaces
  - ADAAG 226.1 General.
  - Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902.
  - ADAAG 902 Dining Surfaces and Work Surfaces
  - ADAAG 902.1 General.
  - Dining surfaces and work surfaces shall comply with 902.2 and 902.3.
  - ADAAG 902.2 Clear Floor or Ground Space.
  - A clear floor space complying with 305 positioned for a forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided.
  - ADAAG 306.2 Toe Clearance.
  - ADAAG 306.2.3 Minimum Required Depth.
  - Where toe clearance is required at an element as part of a clear floor space, the toe clearance shall extend 17 inches (430 mm) minimum under the element.
  - ADAAG 306.2.5 Width.
  - Toe clearance shall be 30 inches (760 mm) wide minimum.
  - ADAAG 306.3 Knee Clearance.
  - ADAAG 306.3.3 Minimum Required Depth.
  - Where knee clearance is required under an element as part of a clear floor space, the knee clearance shall be 11 inches deep minimum at 9 inches above the ground, and 8 inches deep minimum at 27 inches (685 mm) above the finish floor or ground.
  - ADAAG 306.3.5 Width.
  - Knee clearance shall be 30 inches (760 mm) wide minimum.
- XVIII. Inaccessible dining booth tables.
- XIX. Required minimum clear floor space allowing a forward approach not provided at dining booth tables.
  - ADAAG 226 Dining Surfaces and Work Surfaces
  - ADAAG 226.1 General.
  - Where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with 902.

ADAAG 902 Dining Surfaces and Work Surfaces

ADAAG 902.1 General.

Dining surfaces and work surfaces shall comply with 902.2 and 902.3.

ADAAG 902.2 Clear Floor or Ground Space.

A clear floor space complying with 305 positioned for a forward approach shall be provided. Knee and toe clearance complying with 306 shall be provided.

ADAAG 305.3 Size.

The clear floor or ground space shall be 30 inches (760 mm) minimum by 48 inches (1220 mm) minimum.

**18.** The above listing may not include all the barriers countered by Plaintiff and/or which exist at the facility. Plaintiff requires an inspection of the facility to determine **all the** ADA violations.

**19.** The removal of the ADA violations set forth herein is readily achievable and can be accomplished and carried out without much difficulty or expense. 42 U.S.C. § 12182(B)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

**20.** Plaintiff is without adequate remedy at law and is suffering irreparable harm, and reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendants are required to remove the physical barriers, dangerous conditions and ADA violations that exist at the facility, including those set forth herein.

**21.** The Plaintiff has been obligated to retain undersigned counsel for the filing and prosecution of this action. The Plaintiff is entitled to have his reasonable attorney's fees, costs and expenses paid by the Defendants, pursuant to 42 U.S.C., §§ 12205 and 12217.

**22.** Pursuant to 42 U.S.C. §12188(a), this Court is provided with authority to grant injunctive relief to Plaintiff, including an order to alter the subject facility to make it readily accessible to and useable by individuals with disabilities to the extent required by the ADA, and closing the subject facility until the requisite modifications are completed.

**WHEREFORE,** Plaintiff respectfully requests that the Court issue a permanent injunction enjoining Defendants from continuing their discriminatory practices, ordering Defendants to remove the physical barriers to access and alter the subject Facility to make it readily accessible and useable by individuals with disabilities to the extent required by the ADA, closing the subject Facility until the barriers are removed and requisite alterations are completed, and awarding Plaintiff his reasonable attorney's fees, expert fees, costs and litigation expenses incurred in this action.

Dated: January 19, 2025

Respectfully submitted,

s/ Jennifer E. Tucek, Esq.

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